IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA 1928

WP(C).No. 14253 of 2006(V)

PETITIONER:

MOHAMMED @ KUNHAPPA,
S/O. MOOSAKKUTTY HAJI, VETTIKKATTIRI AMSOM
DESOM, ERNAD TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.K.RAMACHANDRAN

RESPONDENTS:

1. **MEERANKUTTY, S/O. LATE ALAVIKKUTTY HAJI**
   CHULLIKKALAVAN HOUSE, VETTIKKATTIRI AMSOM
   DESOM, ERNAD TALUK, MALAPPURAM DISTRICT.

2. **PATHAMMAKKUTTY, W/O. CHERUKULATHIL**
   CHEMBILAMBORI UNNI MOHAMMED HAJI,
   ELAMKUR AMSOM DESOM, ERNAD TALUK,
   MALAPPURAM DISTRICT.

3. **RUKHIYA, D/O. CHULLIKKALAVAN**
   ALAVIKKUTTY HAJI, VETTIKKATTIRI AMSOM DESOM,
   ERNAD TALUK, MALAPPURAM DISTRICT.

4. **AYISA UMMA, DO. DO.**

5. **KADIYAMUNNI UMMA, W/O. CHULLIKKALAVAN**
   ALAVIKKUTTY HAJI, DO. DO.

6. **KUNHAYISSAN UMMA, D/O. CHULLIKKALAVAN**
   AHAMMEDKUTTY MASTER, DO. DO.

7. **PUTHUKKOLLI AMINA,**
   W/O. CHULLIKKALAVAN AHAMMEDKUTTY MASTER,
   DO. DO.

8. **JAMEELA, D/O. CHULLIKKALAVAN**
   AHAMMEDKUTTY MASTER, DO. DO.

9. **MOHAMMED, S/O. CHULLIKKALAVAN**
   AHAMMEDKUTTY MASTER, DO. DO.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.14253/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE AFFIDAVIT IN SUPPORT OF IA.NO.279/97 DT.25.1.97 IN OS.352/96 OF THE MUNSIFF'S COURT, TIRUR.

EXT.P2:- COPY OF THE AFFIDAVIT IN SUPPORT OF IA.896/98 INOS.352/96 OF THE MUNSIFF'S COURT, TIRUR.

EXT.PP3:- COPY OF THE COMMISSIONER'S REPORT DT.19.6.97 IN OS.352/96 OF THE MUNSIFF'S COURT, TIRUR.

EXT.P4:- COPY OF THE ORDER INIA. NO.896/98 IN OS.352/96 DT. 21.2.2006 OF THE MUNSIFF'S COURT, TIRUR.

/TRUE COPY/

tss

M.SASIDHARAN NAMBIAR, J.

W.P.C.NO.14253 OF 2006 (V)

Dated this the 3rd day of January, 2007.

J U D G M E N T

Petitioners are plaintiffs in O.S.352/06 on the file of Munsiff Court, Tirur. This petition is filed under Article 227 of Constitution of India, challenging the dismissal of the application, I.A.896/98, filed under Order XXVI Rule 9 and 10 of Code of Civil Procedure to remit the report submitted by the commissioner. Respondents are the respondents shown in Ext.P4 order. Supplemental defendants 18 to 21 who were not shown as respondents in Ext.P4, filed I.A.153/07, to get themselves impleaded in the writ petition contending that they are necessary parties. But in view of the order to be passed in this petition, I do not find it necessary to implead them as additional respondents.

2. Learned Munsiff considered the objection raised by petitioners and the prayer for remitting the report as sought for.

It was found that the report was remitted twice earlier and the present report was submitted after remitting the reports twice earlier. Learned Munsiff also found that the objection raised by petitioners are matters for evidence. In such circumstances, I do not find any reason to interfere with Ext.P4 order passed by learned Munsiff, in exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India. Petitioners are permitted to adduce evidence in support of the contentions raised in I.A.896/98, at the time of evidence. Petitioners are also entitled to challenge Ext.P4 order along with the judgment, if the judgment goes against them.

M.SASIDHARAN NAMBIAR,
JUDGE.

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